

## **REMARKS**

### **Claim Objections**

In item 1, claim 18 failed to claim priority to a particular claim.

Applicant has amended claim 18 to claim dependency on claim 16 as surmised by the Examiner.

### **Claim rejections under 35 U.S.C. § 112**

In item 3, claims 2 and 4 are rejected as being indefinite. Specifically, claim 2 recites a limitation that is asserted to not be clear. Claim 4 is asserted to also recite a limitation that is not tangible.

Applicant has amended claims 2 and 4.

### **Claim rejections under 35 U.S.C. § 102**

In item 5, claims 1-2, 4, 9-10, 12-15, 17, 22-23 and 25 are rejected as being anticipated by Molne (US Patent No. 6,243,080).

Regarding claim 1, it is asserted that Molne teaches all aspects of the claimed invention.

Applicant respectfully traverses the rejection of amended claim 1. Claim 1 has been amended so as to more distinctly define the invention. Claim 1 now correctly states that a user only makes physical contact with the sensor to cause actuation thereof. No movement or other action is required other than touch. Pushing on the sensor is not required.

In contrast, Molne teaches that a user must always move a sensor in order to cause actuation of the sensor. For example, Molne states that a device has, "a touch-sensitive panel that is *moveable* between a normal position and a select position..." in order to cause actuation of a function. Movement is not required by the present invention.

Regarding claim 2, Applicant respectfully traverses the rejection, as claim 2 is now arguably dependent upon an allowable independent claim.

Regarding claim 4, Applicant respectfully traverses the rejection, as claim 4 is now arguably dependent upon an allowable independent claim.

Regarding claim 9, Applicant respectfully traverses the rejection, as claim 9 is now arguably dependent upon an allowable independent claim.

Regarding claim 12, Applicant respectfully traverses the rejection, as claim 12 is now arguably dependent upon an allowable independent claim.

Regarding claim 13, Applicant respectfully traverses the rejection for the same reasons given in support of claim 1. Applicant has amended claim 13 to more distinctly point out the claimed invention, wherein the claim now states that it is only detection of the presence of the user that will actuate the sensor.

Regarding claims 14-15, 17, 22-23 and 25, Applicant respectfully traverses the rejections, as these claims are now arguably dependent upon an allowable independent claim.

### Claim rejections under 35 U.S.C. § 103

Before addressing the specific obviousness rejection, Applicant wishes to clarify what is required to support an obviousness rejection. The Office Action must establish a prima facie case of obviousness to meet the burden of ' 103.

The PTO has the burden under section 103 to establish a prima facie case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.

In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988) (citations omitted).

In establishing a prima facie case of obviousness, the PTO "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." Id. at 1600. Rather, "[t]he test is whether the claimed invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made."

Connell v. Sears, Roebuck & Co., 220 U.S.P.Q. 193, 199 (Fed. Cir. 1983).

Applicant submits that the Office Action does not make a prima facie case of obviousness in that it does not show either (a) some objective teaching in the prior art that suggests combining the references, or (b) knowledge generally available to one of ordinary skill in the art which would lead that individual to combine the relevant teachings of the references to achieve the invention claimed, or c) that the combined inventions would result in the claimed invention. See In re Fine, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

With these requirements in mind, the specific rejections are addressed. In item 7, claims 3, 5-8, 16 and 18-21 are rejected as being unpatentable over Molne in view of Davis. Specifically, it is asserted that Molne teaches all of the limitations of these claims, except for having the at least one second sensor comprised of a capacitance sensitive touchpad. It is asserted that Davis teaches a hand-held telephone that includes a capacitive touchpad. It is also asserted that it would have been obvious to include the teaching of Davis into the device of Molne because capacitance touch sensing is well-known in the art.

Applicant respectfully traverses the rejection of the claims as obvious in light of Molne and in view of Davis.

Regarding claim 3, Davis does not teach a capacitance sensitive touchpad. Davis teaches "a capacitance switch" (see col. 5, lines 51-64). Capacitance switches have indeed been around for years. Capacitive switches operate as exactly as described in Davis. But a capacitive switch is incapable of operating as a touchpad. A touchpad provides much more functionality than does a switch. The aspect of providing more functionality than is provided by a mere switch is not taught nor suggested by Davis.

Regarding claim 5, Applicant respectfully traverses the rejection because this claim teaches that the sensor itself is capable of conforming to an arcuate surface. The touch sensitive surface of Molne is inflexible, and incapable of conforming to an arcuate surface. It is not the same to say that because the support structure (the springs) of Molne can bend, that the sensor surface itself is bending. A rigid sensor structure, when pressed against an arcuate surface, cannot mold itself to the arcuate surface as can the

present invention.

Regarding claim 6, Applicant respectfully traverses the rejection because this claim is arguable based upon an allowable independent claim.

Regarding claim 7, Applicant respectfully traverses the rejection because, as in independent claim 13, the sensor is capable of proximity sensing and does not require the physical contact that is taught by Molne and Davis.

Regarding claim 8, Applicant respectfully traverses the rejection because, as explained with regards to claim 3, a capacitance sensitive touchpad is not taught nor suggested by Molne or Davis.

Regarding claims 16, and 18-21, Applicant respectfully traverses the rejection of these claims for the same reasons given in support of claims 3 and 5-8.

In item 8, claims 11 and 24 are rejected as being unpatentable over Molne in view of Reber.

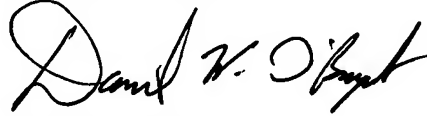
Applicant respectfully traverses the rejection of these claims because these claims are dependent upon arguable allowable independent claims.

In light of the statements above, Applicant respectfully requests issuance of claims 1-25. If any impediment to the allowance of these claims remains after entry of this Amendment, and such impediment could be alleviated during a telephone interview, the examiner is invited to call David W. O'Bryant at (801) 478-0071 so that such matters may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 50-0881.

DATED this 13 day of October, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. O'Bryant". The signature is fluid and cursive, with the first name "David" being the most prominent.

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